ATTORNEY FOR APPELLANT:

JOSEPH P. HUNTER
Muncie, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JERRY A. DISHMAN, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 18A02-0510-CR-974
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Wayne Lennington, Judge
Cause No. 18C05-0408-FC-31

October 5, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Jerry Dishman, Jr., appeals his conviction for Battery by Means

of a Deadly Weapon,[1] a class C felony. Specifically, Dishman contends that the trial court erred in refusing to permit him to fully cross-examine a State's witness to establish bias and that his videotaped statement was improperly admitted into evidence. Finding no error, we affirm the judgment of the trial court.

FACTS

On August 18, 2004, Chad Huston went to Dishman's residence in Muncie to talk with him about paying for a window in Dishman's vehicle that Huston had inadvertently broken. Huston informed Dishman that he planned to purchase a new window and that he and his father-in-law, Leroy Fisher, would install it the next day. However, Dishman became angry, grabbed a table leg from the house, and swung it at Huston. Fisher, who lived nearby, approached and encouraged Huston to leave. As the two men began to walk away, Dishman made threatening remarks about Fisher's family. Dishman then grabbed a small sledgehammer, ran down the porch toward Fisher, and struck him in the head with the hammer. After Fisher fell to the ground, Dishman attempted to hit him again. However, Huston approached, struck Dishman, and grabbed the hammer. Dishman then ran back to his residence and Fisher went to a Muncie hospital where he received ten stitches for his head injury.

After the police were contacted, Dishman was transported to the police station and was questioned by Muncie Police Investigator Melissa Pease. Dishman was issued the Miranda warnings and he informed Investigator Pease that he understood them. Although

[1] Ind. Code § 35-42-2-1(a)(3).

Dishman smelled of alcohol, he signed the "statement of rights" portion of the written advisement but he did not sign the "waiver" part of the form. Tr. p. 154. However, Dishman informed Investigator Pease several times that he wanted to talk with her about the incident.

When Investigator Pease began the questioning, Dishman appeared coherent and seemed to understand Pease's questions. During the statement, Dishman told Investigator Pease that Huston approached his home, stepped onto his porch, and attempted to hit him. Dishman admitted grabbing the table leg and swinging it at Huston. Dishman then claimed that Huston hit him several times and that both Huston and Fisher beat him. Dishman also stated that he did not know who grabbed the hammer and he could not explain how Fisher could have been hit with it.

As a result of the incident, Dishman was charged with two counts of battery. Count I was for striking Fisher with the hammer and Count II was for hitting Huston with the table leg. At a jury trial that commenced on June 23, 2004, Dishman elicited testimony from Fisher and Huston regarding Huston's failure to pay for the broken window. However, the trial court prevented Dishman from presenting any further evidence on that issue. The trial court also admitted Dishman's videotaped statement into evidence over his objection.

In the end, Dishman was found guilty of Count I—the battery on Fisher—and not guilty of Count II—the battery on Huston. Thereafter, Dishman was sentenced to four years of incarceration with two and one-half years executed and one and one-half years suspended to probation. He now appeals.

DISCUSSION AND DECISION

I. Improper Restriction of Cross-Examination

Dishman argues that the trial court improperly restricted his cross-examination of Huston that related to "Huston's bias as to a financial interest in the case." Appellant's Br. p. 7. Specifically, Dishman claims that he should have been permitted to more fully cross-examine Huston as to his alleged bias because "the possibility that a witness has a financial interest in the outcome of a trial is a proper subject for cross-examination." Id.

In resolving this issue, we first note that the decision whether to admit or exclude evidence is left to the sound discretion of the trial court. Doty v. State, 730 N.E.2d 175, 178 (Ind. Ct. App. 2000). The trial court's ruling will generally not be reversed on appeal absent a manifest abuse of discretion that results in the denial of a fair trial. Zawacki v. State, 753 N.E.2d 100, 102 (Ind. Ct. App. 2001). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Myers v. State, 718 N.E.2d 783, 789 (Ind. Ct. App. 1999).

Pursuant to Indiana Evidence Rule 401, evidence is relevant if it has the tendency "to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Generally, if a witness in a criminal trial has a financial motive for testifying in a certain fashion, the jury may hear evidence regarding the motive because it is relevant evidence of the witness's credibility. Hayden v. State, 830 N.E.2d 923, 931-32 (Ind. Ct. App. 2005), trans. denied. However, a trial court is not prevented from imposing limits on a defense counsel's inquiry into the

potential bias of a prosecution witness. Collins v. State, 835 N.E.2d 1010, 1015 (Ind. Ct. App. 2005), trans. denied. Only a clear abuse of discretion warrants reversal. Id.

In this case, Dishman established through Fisher and Huston's testimony that he had not been paid for the broken window. Tr. p. 58-59, 96, 116. After obtaining an admission from Huston that he had not paid, Dishman again attempted to question Huston as to whether he still owed the money. Id. at 116-17. The State objected, and the trial court determined that the evidence was not relevant. Id. at 117. Inasmuch as Dishman established that Huston had not paid for the window at the time of these offenses or by the time of trial, it is apparent that continued cross-examination of Huston on the same issue would have been cumulative of the testimony that had already been admitted. Hence, we cannot say that the trial court abused its discretion in preventing Dishman from further cross-examination regarding Huston's failure to pay for the window. See Burks v. State, 838 N.E.2d 510, 519 (Ind. Ct. App. 2005), trans. denied (holding that in accordance with Indiana Evidence Rule 403, the trial court may exclude relevant evidence if it would result in the needless presentation of cumulative evidence).

Moreover, the sole issue at trial was whether Dishman committed battery on Huston and Fisher. Therefore, evidence that Huston may still have owed money to Dishman did not make it any more or less probable that Dishman intentionally struck the two men. Put another way, Dishman has failed to show that Huston had any financial motive to testify against him at trial. Other than the fact that Huston's debt to Dishman may have ultimately led to the fight, the existence of the debt had nothing to do with the prosecution for battery.

That is, Huston still owed the debt regardless of the outcome of the trial. As a result, the trial court also properly excluded the evidence on this basis, and Dishman's claim of error fails.

II. Admission of Videotaped Statement

Dishman next argues that his videotaped statement was improperly admitted into evidence. Specifically, Dishman claims that the statement was not voluntary because he "smelled of alcohol" and did not sign a waiver of rights form prior to making the statements. Appellant's Br. p. 8.

When reviewing the trial court's decision to admit a defendant's statement into evidence, this court will not reweigh the evidence and will consider conflicting evidence most favorable to the trial court's determination. Turner v. State, 738 N.E.2d 660, 662 (Ind. 2000). If there is substantial evidence to support the trial court's conclusion, it will not be set aside. Richey v. State, 426 N.E.2d 389, 392 (Ind. 1981).

When a defendant challenges the voluntariness of a confession, the State must prove "beyond a reasonable doubt that the defendant voluntarily waived his rights, and that the defendant's confession was voluntarily given." Miller v. State, 770 N.E.2d 763, 767 (Ind. 2002). In evaluating a claim that a statement was not voluntary, the trial court should consider the totality of the circumstances, including "the crucial element of police coercion, the length of the interrogation, its location, its continuity, the defendant's maturity, education, physical condition, and mental health." Id. We examine the record for substantial probative evidence of voluntariness. Schmitt v. State, 730 N.E.2d 147, 148 (Ind. 2000).

To determine that a confession was given voluntarily, the court must conclude that inducement, threats, violence, or other improper influences did not overcome the defendant's free will. Clark v. State, 808 N.E.2d 1183, 1191 (Ind. 2004). A defendant's lack of sleep and intoxication may be factors in determining voluntariness. Ringo v. State, 736 N.E.2d 1209, 1213 (Ind. 2000). However, it is only when an accused is "so intoxicated that he is unconscious as to what he is saying that his confession will be inadmissible." Williams v. State, 489 N.E.2d 53, 56 (Ind. 1986). Intoxication of a lesser degree goes only to the weight to be given to the statement and not to its admissibility. Id.

Finally, we note that a waiver of an individual's Miranda rights occurs when the defendant—after being advised of those rights and acknowledging that he understands them—proceeds to make a statement without taking advantage of those rights. Ringo, 736 N.E.2d at 1212. A signed waiver form is one item of evidence showing that the accused was aware of and understood his rights. Carter v. State, 490 N.E.2d 288, 291 (Ind. 1986). However, an express written or oral waiver of rights is not necessary to establish a waiver. Cook v. State, 544 N.E.2d 1359, 1363 (Ind. 1989).

In this case, Investigator Pease acknowledged that Dishman smelled of alcohol and was a bit unsteady on his feet when she interviewed him. Tr. p. 144, 150. However, Investigator Pease testified that she verbally informed him of the individual Miranda warnings and that he indicated that he fully understood those rights. Id. at 153-54. Dishman signed the statement of rights portion of the advisement, but stated that he did not want to sign the waiver form. Id. at 154. Dishman then repeated to Investigator Pease several times

that he wanted to speak with her. State's Ex. 10.

Under these circumstances, Dishman's acknowledgment of his rights and his outward expression of his desire to talk with Investigator Pease amounted to an implied waiver of his rights. See Cook, 544 N.E.2d at 1363. Moreover, the evidence demonstrated that Dishman was coherent and able to understand Investigator Pease's questions. Dishman also physically demonstrated Huston's alleged actions that were directed toward him more than once without showing any signs of intoxication. State's Ex. 10. In sum, there is no indication that Dishman was intoxicated to the extent that his statement should be deemed involuntary. See Carter, 730 N.E.2d at 158 (holding that defendant's awareness, organized thinking, and understanding of what was transpiring indicated that he was not so intoxicated during the interview as to render it inadmissible). Hence, the evidence established beyond a reasonable doubt that Dishman understood the Miranda warnings and knowingly and intelligently waived his rights despite the fact that he had been drinking alcohol earlier in the day.

Finally, we note that while Dishman perhaps made some incriminating statements about his conduct toward Huston, he was acquitted of that charge. As for the battery against Fisher, Dishman asserted that he knew nothing about the hammer and he could not explain how Fisher could have been hit with it. In essence, Dishman has made no showing as to how such statements may have incriminated him. Thus, for these reasons, we conclude that the trial court did not err in admitting Dishman's videotaped statement into evidence.

The judgment of the trial court is affirmed.

VAIDIK, J., and CRONE, J., concur.